



**Common Reporting Standard (“CRS”)
& Foreign Account Tax Compliance Act (“FATCA”)
Compliance Information Notice 2024/1**

The purpose of the Compliance Information Notice is to reflect aspects of compliance with the obligations under the Common Reporting Standard (“CRS”) and the Foreign Account Tax Compliance Act (“FATCA”) where issues have been identified during the desk-based and onsite compliance audits undertaken by the Revenue Service during 2023.

This Compliance Information Notice is issued under the provisions of Regulation 10 of The Income Tax (Approved International Agreements) (Implementation) (United Kingdom and United States of America) Regulations, 2014 (“the FATCA Regulations”) and the provisions of Regulation 12 of The Income Tax (Approved International Agreements) (Implementation) (Common Reporting Standard) Regulations, 2015 (“the CRS Regulations”). .

All Financial Institutions have, since the commencement of the Regulations, been required to operate in accordance with:

- the respective CRS and FATCA Regulations;
- the OECD Standard for Automatic Exchange of Financial Account Information in Tax Matters (Second Edition) (hereinafter referred to as “the Standard”), including its commentary where applicable;
- The OECD Standard for Automatic Exchange of Financial Account Information in Tax Matters: Implementation Handbook (Second edition) including the FAQs contained therein;
- The further consolidated “CRS-related Frequently Asked Questions (February 2019)” and other supporting material/guidance located on the OECD Automatic Exchange Portal (<https://www.oecd.org/tax/automatic-exchange/common-reporting-standard/>);
- Guidance, Bulletins and Compliance Information Notices published by the Guernsey Revenue Service, in accordance with the respective CRS and FATCA Regulations.

This Compliance Information Notice contains the following information:

Index

- 1. Self-Certification – Obligation and Timing**
- 2. Self-Certification Report (“SCR”) to be submitted to the Revenue Service**
- 3. Pre-existing accounts – TIN and Date of Birth – Reasonable Efforts**
- 4. Tax Identification Numbers (“TIN”) – CRS**
- 5. Tax Identification Numbers (“TIN”) - FATCA**
- 6. Tax Identification Numbers (“TIN”) – The use of “NOTIN” - CRS**
- 7. Tax Identification Numbers (“TIN”) – Incorrect use of GIIN - CRS**
- 8. Tax Identification Numbers (“TIN”) – CRS XML Schema & Missing TINs - CRS**
- 9. Reasonableness of Self Certifications – “reasonableness test”**
- 10. CRS circumvention – Anti-avoidance**
- 11. Classification of Active Non-Financial Entities (Active NFEs)**
- 12. Guidance on CRS circumvention - CBI/RBI schemes**
- 13. CRS Avoidance “Zero Cash Value Insurance Contracts”**
- 14. Controlling Persons - Beneficial Ownership - CRS**
- 15. IGOR – Front End Validation / Accepted with Errors**
- 16. Crypto-Asset Reporting Framework and 2023 update to the Common Reporting Standard**
- 17. IGOR Compliance Assurance Statement**

1. Self-Certification – Obligation and Timing

The Standard requires Financial Institutions to obtain a self-certification from any new or pre-existing client who opens a new account. The self-certification must be part of the “day one” processes on opening the account. This means that the new client account cannot be opened before a valid self-certification is obtained. Obtaining a self-certification for any new or pre-existing client who opens a new account is critical aspect of ensuring that the CRS is effective.

Bulletin 2021/5 explains the enhanced sanctions and powers the Guernsey Revenue Service can apply for failure to comply with the CRS and FATCA obligations.

Bulletin 2021/5 issued 14 September 2021 link here:

<https://gov.gg/CHttpHandler.ashx?id=144073&p=0>

There are a limited number of circumstances where , it may not be possible to obtain a self-certification on “day one” of the account opening process. For example, where an insurance contract has been assigned from one person to another or in the case where an investor acquires shares in an investment trust on the secondary market. In such exceptional circumstances it is expected that the self-certification should be both obtained and validated

as quickly as possible, and in any case, within a period of 90 days. See Bulletin 2017/6 for more information.

2. Self-Certification Report (“SCR”) to be submitted to the Revenue Service

Following Bulletins 2021/6, 2022/2 and Compliance Information Notice 01/22 issued 10 March 2022 (Supplementary FAQs), this Compliance Information Notice is a reminder to RFI of the requirement to submit a Self-Certification Report (“SCR”) under section 171F of the Income Tax (Guernsey) Law, 1975, as amended (“the Law”). Further, submission of the SCR obligations, the template and guidance was disseminated to all Guernsey RFIs via IGOR on 5 February 2024.

The SCR is an ongoing annual requirement for Financial Institutions to report all account holders (both individuals and entities) where they have been unable to obtain valid self-certification for the purposes of CRS and/or FATCA due diligence procedures under section 171F of the Law.

This is to remind you that Self-Certification Reports in respect of 2023 are required to be submitted to the Revenue Service, via IGOR, on or before 31 March 2024.

Bulletin 2021/6 regarding legislation and regulatory changes link here:

<https://www.gov.gg/CHttpHandler.ashx?id=148632&p=0>

Supplementary FAQs 1.0, Compliance Information Notice 01-22 issued 10 March 2022 link here:

<https://www.gov.gg/CHttpHandler.ashx?id=151030&p=0>

3. Pre-existing accounts – TIN and Date of Birth – Reasonable Efforts

In accordance with the Standard, Section I (paragraphs 27 and 28 of the Commentary), RFIs are required to use reasonable efforts to obtain the TIN and date of birth with respect to preexisting accounts by the end of the second calendar year following the year in which such accounts were identified as reportable accounts.

Section I (paragraph 28 of the Commentary) provides examples of reasonable efforts, which “...include contacting the Account Holder (e.g. by mail, in-person or by phone), including a request made as part of other documentation or electronically (e.g. by facsimile or by e-mail); and reviewing electronically searchable information maintained by a Related Entity of the Reporting Financial Institution...”.

The expectation is that appropriate documented evidence is available to the Revenue Service, upon request to demonstrate the ongoing reasonable efforts to obtain the CRS due diligence in accordance with the Standard.

This applies to each jurisdiction of tax residence. Therefore if an account holder or controlling person has multiple jurisdictions of tax residence, a valid TIN for each reportable tax jurisdiction is to be reported.

4. Tax Identification Numbers ("TIN") - CRS

The OECD Automatic Exchange Portal – Tax Identification Numbers, provides an overview regarding domestic rules in the jurisdictions listed governing the issuance, structure, use and validity of Tax Identification Numbers ("TINs") or their functional equivalents.

This resource can assist reporting financial institutions to successfully implement complete and accurate reporting TINs for the Standard.

OECD Automatic Exchange Portal – Tax Identifications Numbers - link here:

<https://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/tax-identification-numbers/>

5. Tax Identification Numbers ("TIN") - FATCA

Financial Institutions should refer to the Bulletin 2023/3 regarding FATCA TIN reporting obligations and the update on determinations of significant non-compliance by the IRS where there is a failure to report U.S. TINs for pre-existing accounts (IRS Notice 2023-11 contained in Bulletin 2023/3) .

<https://www.gov.gg/CHttpHandler.ashx?id=165578&p=0>

6. Tax Identification Numbers ("TIN") – The use of "NOTIN" - CRS

Guernsey trusts are not issued a TIN and have no functional equivalent identifiers, the appropriate CRS reporting for Guernsey trusts TIN is "NOTIN" within the CRS XML Schema Version 2.0 as detailed within the OECD Automatic Exchange Portal – Tax Identification Numbers included in **point 4 above**.

The more widespread use of "NOTIN" for CRS reporting via IGOR should be used only in circumstances in which no TIN or functional equivalent identifiers, have been issued in that respective jurisdiction. For example, the Cayman Islands and the British Virgin Islands do not issue tax identification numbers or functional equivalent identifiers and therefore "NOTIN" is appropriate to be reported for this circumstance.

7. Tax Identification Numbers (“TIN”) – Incorrect use of GIIN - CRS

The Global Intermediary Identification Number (“GIIN”) is to be used for FATCA Foreign Financial Institutions in accordance with the FATCA Regulations.

Guernsey Reporting financial institutions should not report the Global Intermediary Identification Number (“GIIN”) for CRS financial institutions reporting purposes. For example, a company incorporated in Guernsey the TIN to be reported is the Company Registration Number, as issued by the Guernsey Registry. If a company is tax resident in Guernsey, but not incorporated in Guernsey, the company’s TIN is the company’s Guernsey tax reference number, which is issued by the Guernsey Revenue Service.

For more information on jurisdiction specific TINs please see the link to the OECD Automatic Exchange Portal Tax Identifications Numbers - included in **point 4 above**.

8. Tax Identification Numbers (“TIN”) – CRS XML Schema & Missing TINs - CRS

Only a valid TIN (if available) should be populated within the CRS XML Schema Version 2.0. For those financial institutions that are missing a valid CRS TIN for a financial account for any reportable individual(s) and/or entities, for which a TIN or functional equivalent identifier has been issued, then the following reporting is required:

Within the CRS XML Schema Version 2.0 the TIN data element “TIN” is to be removed for the relevant individual and/or entity when a valid CRS TIN is missing.

Regarding appropriate TINs to be reported for FATCA – please see point 5 above.

9. Reasonableness of Self Certifications – “reasonableness test”

Reporting Financial Institutions are required to confirm the reasonableness of self-certifications. For example, for new individual and new entity accounts the Standard requires a self-certification (and confirmation of its reasonableness) without de minimis threshold. Further, the Standard provides examples of the application of the reasonableness tests, (see Section IV and VI together with the associated Commentary).

A self-certification remains valid unless the Reporting Financial Institution knows, or has reason to know, that the original self-certification is incorrect or unreliable. Where the original self-certification becomes incorrect or unreliable, the Reporting Financial Institution cannot rely on the original self-certification and must obtain a valid self-certification or a reasonable explanation and documentation.

The expectation is that the “reasonableness test” is documented within the RFIs AEOI policies, procedures and controls and is demonstrably operational.

10. CRS circumvention – Anti-avoidance

CRS Regulation 11 “Anti-avoidance” of the Regulations states:

<u>Anti-avoidance.</u>		
11.	(1)	If -
	(a)	a person enters into any transaction or series of transactions, and
	(b)	the main purpose, or one of the main purposes, of the person in entering into the transaction or series of transactions is to avoid any obligation or liability under these regulations,
these regulations shall have effect as if the transaction or series of transactions had not been entered into.		

Below are two examples that attempt to circumvent the CRS Regulations:

- Bank account manipulation – Financial Institutions manipulate the reporting period and account holder balances to avoid or under-report balances.
- Electronic Record Search – An RFI deliberately avoids creating any electronic records in order to avoid potential reportable indicia or the existence of pre-existing accounts becoming a high value account.

11. Classification of Entities – Active Non-Financial Entities (Active NFEs)

The CRS Standard states any NFE can be an Active NFE, provided that it meets any of the criteria listed in the Standard. A summary of those criteria is listed in paragraph D(9) of Section VIII of the Standard.

Active NFEs - by reason of income and assets

Further, “Active NFEs by reason of income and assets”, the criteria to qualify requires that both the “income criteria” (less than 50% of the gross income is passive income) and the “asset criteria” (less than 50% of the assets held are assets that produce or are held for the production of passive income) are met. Therefore both criteria must be met in order to be correctly classified as “Active NFEs by reason of income and assets” (paragraph D(9)(a) Section VIII of the Standard).

Active NFEs – publicly traded NFEs

This exemption requires that the stock of the entity (corporation) must be regularly traded on an established securities market (paragraph D(9)(b) Section VIII of the Standard).

In addition to the CRS Commentary referenced above, the OECD have issued a related FAQ on this matter within the Implementation Handbook (Second Edition) FAQ, Section VIII: Definitions; D. Reportable account FAQ 5 Definition of Active NFE – stock regularly traded on an established securities market.

Whilst the above guidance is provided within the CRS Commentary and FAQs, the condition requires interpretation.

The expectation is that appropriate evidence and if relevant, accompanying analysis (including copies of appropriate professional advice – if applicable), are available upon request by the Revenue Service to demonstrate correct classification of an Active NFE.

12. Guidance on CRS circumvention – CBI/RBI schemes

The OECD have published information regarding CRS circumvention schemes, specifically residence and citizenship by investment (CBI/RBI) schemes (see link below). The OECD has analysed over 100 CBI/RBI schemes offered by CRS-committed jurisdictions, identifying the schemes that potentially pose a high-risk to the integrity of CRS. These schemes allow individuals to obtain citizenship or residence rights through local investments or against a flat fee for perfectly legitimate reasons, however they can also be potentially misused to hide an individual's assets offshore by escaping reporting under the CRS Standard.

Financial Institutions are required to take the outcome of the OECD's analysis of high risk schemes into account when performing their CRS due diligence obligations. The expectation is that Financial Institutions will therefore enhance their policies; procedures and controls based on the analysis and recommended actions issued by the OECD when performing CRS due diligence procedures to determine the tax residency(ies) of an account holder or Controlling Person.

The relevant OECD analysis and recommended actions include:

- What are CBI/RBI schemes?
- How can CBI/RBI schemes be misused to circumvent CRS reporting?
- Which CBI/RBI schemes present a potentially high risk?
- What should Financial Institutions do?
- OECD Automatic Exchange Portal link here:

[Residence/Citizenship by investment - Organisation for Economic Co-operation and Development \(oecd.org\)](https://www.oecd.org/tax/automatic-exchange/crs/implementation-standards/)

13. CRS Avoidance “Zero Cash Value Insurance Contracts”

The definition of the term “Cash Value” is defined within the Standard paragraph C(8) within Section VIII: Defined Terms. Cash Value is the greater of (i) the amount that the policyholder is entitled to receive upon surrender or termination of the contract (determined without

reduction for any surrender charge or policy loan), and (ii) the amount the policyholder can borrow under or with regard to the contract. Therefore, reporting financial institutions providing or administering a “Cash Value Insurance Contract” which provide the policyholder loans in accordance with the contract, the amount that can be borrowed regarding the contract is to be interpreted and reported as the Cash Value. This in accordance with the Standard and prevents under-reporting of a Cash Value Insurance Contract.

14. Controlling Persons - Beneficial Ownership - CRS

The term Controlling Persons, within the CRS Standard, paragraph D(6) corresponds to the term “beneficial owner” as described in Recommendation 10 and the Interpretative Note on Recommendation 10 of the Financial Action Task Force (“FATF”) Recommendations (as adopted in February 2012) and must be interpreted in a manner consistent with such Recommendations, with the aim of protecting the international financial system from misuse including with respect to tax crimes.

In the case of a trust (and Entities equivalent to trusts), the term Controlling Persons is explicitly defined in the Standard to mean the settlor(s), the trustee(s), the protector(s) (if any), the beneficiary(ies) or class(es) of beneficiaries, and any other natural person(s) exercising ultimate effective control over the trust. If the settlor, trustee, protector, or beneficiary is an Entity, the Reporting Financial Institution must identify the Controlling Persons of such Entity in accordance with FATF Recommendations. Further specific guidance in relation to the application of the due diligence and reporting requirements for trusts is provided in Chapter 6 within the CRS Standard for Automatic Exchange of Financial Information in Tax Matters – Implementation Handbook (Second edition).

15. IGOR – Front End Validation / Accepted with Errors

From the 2023 reporting period onwards, for financial account data submitted via IGOR, additional front end validation has been implemented. This enhanced functionality within IGOR will alert and assist the RFI when submitting financial account data for potential errors for the following two data elements; date of birth and TIN.

Date of birth – for individual financial accounts with no date of birth or a date of birth outside an expected range, an accepted with errors warning message will appear.

TINs – for financial accounts submitted with no TIN provided, an accepted with errors warning message will appear.

It is expected that RFIs review any warning message for these accepted with errors via IGOR and submit corrections where appropriate in timely manner.

It is anticipated that further development of IGOR front end validation will be extended to other data elements in the future.

16. Crypto-Asset Reporting Framework and 2023 update to the Common Reporting Standard

The OECD have published the following document “Crypto-Asset Reporting Framework and 2023 update to the Common Reporting Standard”, which can be found below:

[International Standards for Automatic Exchange of Information in Tax Matters: Crypto-Asset Reporting Framework and 2023 update to the Common Reporting Standard | en | OECD](#)

The document explains the pending Crypto-Asset Reporting Framework (“CARF”) and the amendments to the Common Reporting Standard. The proposed timelines for a first exchange under the amended CRS and CARF in 2027 for 2026 reporting period data.

On the 10 November 2023 Guernsey committed to adopting the CARF in time for exchanges to commence by 2027 by supporting a joint statement by participating jurisdictions. The media release can be found here:

[Collective engagement to implement the Crypto-Asset Reporting Framework - States of Guernsey \(gov.gg\)](#)

Further information regarding the implementation of the amended CRS and CARF will be disseminated during 2024.

17. IGOR Compliance Assurance Statement

Further to Bulletin 2021/3 the Compliance Assurance Statement for the 2023 reporting period when submitting a return via IGOR has been set as follows:

CRS Compliance Assurance Statement

1. All appropriate policies, procedures and systems were in place in order to comply with the CRS Regulations reporting requirements for all financial accounts which it maintained and established during the reporting period.
2. For new accounts a valid self-certification is either in place and the appropriate reporting and due diligence requirements have been met or has been reported to the Director (Revenue Service) where it has not been possible to obtain a valid self-certificate.
3. All financial accounts have been appropriately reviewed to ensure complete and accurate data has been reported in a timely manner.
4. Only reportable accounts that comply with the “undocumented account” criteria have been reported accordingly.

5. All reportable accounts closed during the period covered by the report have been included in the report and identified as such.
6. The evidence used to comply with the due diligence requirements and a record of the steps taken when performing due diligence reviews on accounts will be retained in accordance with the CRS Regulations. (See note 1 below)

[Where Nil reports submitted]

1. All appropriate policies, procedures and controls were in place in order to comply with the CRS and FATCA Regulations reporting requirements for all financial accounts which it maintained and established during the reporting period.

FATCA Compliance Assurance Statement

1. All appropriate policies, procedures and systems were in place in order to comply with the FATCA Regulations reporting requirements for all financial accounts which it maintained and established during the reporting period.
2. For new accounts a valid self-certification is either in place and the appropriate reporting and due diligence requirements have been met or has been reported to the Director (Revenue Service) where it has not been possible to obtain a valid self-certificate.
3. All financial accounts have been appropriately reviewed to ensure complete and accurate data has been reported in a timely manner.
4. All reportable accounts without a valid TIN have been contacted and requested to provide their TIN.
5. All reportable accounts closed during the reporting period have been included in the report and identified as such.
6. The evidence used to comply with the due diligence requirements and a record of the steps taken when performing due diligence reviews on accounts will be retained in accordance with the FATCA Regulations. (See note 2 below)

[Where Nil reports submitted]

1. All appropriate policies, procedures and controls were in place in order to comply with the CRS and FATCA Regulations reporting requirements for all financial accounts which it maintained and established during the reporting period.

Note 1: CRS Regulations, Regulation 4 The Reporting and Due Diligence Procedure Complying with Due Diligence Requirements.

Regulation 4(4) is a continuing obligation, and thus an RFI's records are not to be kept only from when the arrangements were first applied to the financial accounts (i.e. the due diligence), but when the arrangements were applied to the financial accounts i.e. every year in which the arrangements are applied to the financial accounts. By virtue of the RFI relying upon a self-certification in any particular year to report to the Director, the evidence must be kept for 6 years thereafter. Therefore records will be kept for 6 years following the last information reported.

**Note 2: FATCA Regulations, Regulation 3 Due Diligence Procedures
Complying with Due Diligence Requirements.**

Regulation 3(2) is a continuing obligation, and thus an RFI's records are not to be kept only from when the arrangements were first applied to the financial accounts (i.e. the due diligence), but when the arrangements were applied to the financial accounts i.e. every year in which the arrangements are applied to the financial accounts. By virtue of the RFI relying upon a self-certification in any particular year to report to the Director, the evidence must be kept for 6 years thereafter. Therefore records will be kept for 6 years following the last information reported.

Please note that the Compliance Assurance Statement is subject to an annual review. The matters covered by the Compliance Assurance Statement may change from time to time as a result of analysis of reports identifying specific areas of attention.

Further Information

If you require further information regarding this Compliance Information Notice, please forward a message via the IGOR message facility or an email to AEOI@gov.gg

Abbreviations used in this Compliance Information Notice

- CRS - Common Reporting System
- FATCA - Foreign Account Tax Compliance Act
- IGOR - International Gateway Online Reporter System.
- NRFI - Non-reporting Financial Institution
- RFI - Reporting Financial Institution
- TIN - Tax Identification Number

Sources of Information

The following are links to CRS & FATCA information sources.

States of Guernsey website pages:

- www.gov.gg/crs
- www.gov.gg/fatca

OECD Automatic Exchange of Information Portal

- [Common Reporting Standard \(CRS\) - Organisation for Economic Co-operation and Development \(oecd.org\)](https://oecd.org)

Residence/Citizenship by Investment

- [Residence/Citizenship by investment - Organisation for Economic Co-operation and Development \(oecd.org\)](https://oecd.org)

OECD Information on Tax Identification Numbers

- [Tax identification numbers \(TINs\) - Organisation for Economic Co-operation and Development \(oecd.org\)](https://oecd.org)

IRS FATCA Registration & FFI List: Global Intermediary Identification Number (“GIIN”) Composition Information

- [FATCA Registration and FFI List: GIIN Composition Information | Internal Revenue Service \(irs.gov\)](https://irs.gov)

IRS e-news subscriptions

- [e-News Subscriptions | Internal Revenue Service \(irs.gov\)](https://irs.gov)

IRS FATCA FAQs

- [Frequently Asked Questions FAQs FATCA Compliance Legal | Internal Revenue Service \(irs.gov\)](https://irs.gov)

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23 February 2024

Ends.